

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Case No. 22-71045-ast

Michael Krichevsky,

Chapter 11

Hon. Chief Judge: Alan S. Trust

Hearing Date: June 9, 2022 at 2:00 PM

Debtor.

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NOTICE OF MOTION TO CONFIRM
ABSENCE OF THE AUTOMATIC STAY OR IN THE ALTERNATIVE RELIEF FROM
THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. 362(d)(1) and (d)(2)

PLEASE TAKE NOTICE, that upon the Motion dated May 11, 2022 (the “Motion”), of SN Servicing Corporation as servicer for U.S. Bank Trust National Association, as Trustee of the Bungalow Series IV Trust (together with any successor or assign, “Movant”), a secured creditor of the above-named Debtor, by its attorneys, Friedman Vartolo LLP, shall move before the Honorable Alan S. Trust, United States Bankruptcy Chief Judge, seeking an Order as to the property located at 1 East 72nd Street, Brooklyn, NY 11234 aka 1352 East 72nd Street, Brooklyn, NY 11234: (i) pursuant to 11 U.S.C. § 362(j) confirming that the automatic stay imposed by 11 U.S.C. § 362(a) did not take effect upon the filing of the instant petition, as the property was acquired post-petition; (ii) or seeking an order pursuant to 11 U.S.C § 362(d)(1) and (d)(2) and (iii) granting such other and further relief as this Court deems is just and proper.

This motion shall be heard telephonically or via Zoom on June 9, 2022 at 2:00 P.M., or as soon thereafter as counsel may be heard.

Commencing with his hearings scheduled for March 8, 2022, and continuing thereafter, all attorneys and unrepresented parties are required to register for the hearing(s) at least two (2) business days in advance of the scheduled hearing by using the Court's eCourt Appearances platform: <https://ecf.nyeb.uscourts.gov/cgi-bin/nyebAppearances.pl>.

Parties do not need to contact the Courtroom Deputy to request prior authorization to appear telephonically.

If for some reason you are not able to use the eCourt Appearances platform you must email the Courtroom Deputy at: ast_hearings@nyeb.uscourts.gov at least two (2) business days prior to the hearing and state that a reasonable effort to use the platform has been made. You must include your name, the case number(s), who you represent if you are an attorney, and the date of the hearing. Your email must include in the Re line "I am not able to register using eCourt Appearances." You will then be provided with the dial in / log in information. If you do not have internet access you may call the courtroom deputy with this information.

Conduct during audio only hearings:

Announce your name each time before speaking.

Speak up and enunciate so that you can be heard and understood.

Avoid the use of a speaker phone (use a landline, if possible).

If you are not speaking keep your phone muted.

PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, must be served so as to be received not later than seven (7) days before the return date of this motion.

Dated: May 19, 2022
Garden City, New York

FRIEDMAN VARTOLO, LLP

/s/ Michael L. Carey, Esq.
Michael L. Carey, Esq.
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TO:

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Leonid Mandel
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Non-Party Mortgagor

United States Trustee
Long Island Federal Courthouse
560 Federal Plaza - Room 560
Central Islip, NY 11722-4437
U.S. Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

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**AFFIRMATION IN SUPPORT OF AN ORDER
CONFIRMING ABSENCE OF AUTOMATIC STAY OR IN THE ALTERNATIVE RELIEF
FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. 362(d)(1) and (d)(2)**

Michael L. Carey an attorney admitted to practice law in the Courts of the State of New York and in this Court, hereby affirms the following to be true under penalty of perjury:

1. I am an associate with Friedman Vartolo LLP, attorneys for SN Servicing Corporation as servicer for U.S. Bank Trust National Association, as Trustee of the Bungalow Series IV Trust (together with any successor or assign, the “Movant”), an interested party in this case for the reasons indicated herein.

2. I am fully familiar with the facts of this case and submit this affirmation in support of Movant’s request for an Order confirming the absence of the automatic stay.

RELIEF REQUESTED

3. This is a contested matter brought pursuant to Federal Rules of Bankruptcy Procedure 4001 & 9013 and 11 U.S.C. § 362(j) for an Order (i) confirming that the automatic stay imposed by 11 U.S.C. § 362(a), as it relates to Movant’s interest in the property known as 1 East 72nd Street, Brooklyn, NY 11234 aka 1352 East 72nd Street, Brooklyn, NY 11234 (the “Property”) did not take effect upon the filing of the instant petition, as the property was acquired post-petition; (ii) or seeking an order pursuant to 11 U.S.C § 362(d)(1) and (d)(2) and (iii) granting such other and further relief as this Court deems is just and proper.

BACKGROUND

4. The Movant is the holder of a Note (with “Allonges”) dated December 13, 2005 and executed by Yan Klig (the “Obligor/Mortgagor”) and a Mortgage given by the Obligor, Yan Klig and Leonid Mandel (“Co-Mortgagor”) dated December 13, 2005, in the original principal amount of \$160,000.00 secured by the Property and recorded in the Office of the City Register of the City of New York on December 20, 2005 in CRFN No. 2005000699441. The Loan was ultimately assigned to Movant by an Assignment of Mortgage dated March 17, 2021. Copies of the Note, Mortgage, and Assignments of Mortgage are annexed hereto as **Exhibit A**.

5. Movant’s request for relief is being made as prior to the pendency of the instant bankruptcy case, pursuant to 11 U.S.C. § 362(j) as the Debtor obtained possession and interest in the property post-petition.

6. The Debtor filed Amended scheduled on June 9, 2020 (ECF Doc. No. 64). The Debtor states in the Amended Schedule A/B disclosing 25 (twenty-five) % interest partnership in L&M, in the land upon which the property is situated. A copy of the Debtor’s Amended Schedules are annexed hereto as **Exhibit B**.

7. Pursuant to a Quit Claim Deed executed by Co-Mortgagor Leonid Mandel dated September 30, 2019 and recorded on October 4, 2019 in the City Register of the City of New York under CRFN No. 2019000321910, conveyed fifty percent (50%) of the property each to Leonid Mandel, and the Debtor Michael Krichevsky, after the Bankruptcy Petition had been filed. A copy of the Quit Claim Deed is annexed hereto as **Exhibit C**.

RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) and (d)(2), IN THE ALTERNATIVE

8. The Debtor has failed to make current mortgage payments due under the terms of the Note and Mortgage. Furthermore, the Loan has matured as of January 1, 2009. The total amount on the loan is due and owing.

9. Pursuant to 11 U.S.C. §362 (d)(1), the court shall enter an order granting a secured creditor relief from the automatic stay for cause “including the lack of adequate protection of an interest in property of such party and interest.”

10. Specifically, courts have found cause for the granting of relief from an automatic stay where the debtor has failed to make post-petition mortgage payments as they become due. In *Re Michael Lancelot Taylor*, 151 B.R. 646,648 (Bankr. E.D.N.Y. 1993).

11. Relief pursuant to 11 U.S.C. § 362(d)(2) is also appropriate due to the lack of equity in the Property. The Debtor’s outstanding amount of the obligations to Movant less any partial payments or suspense balance is approximately \$402,000.20 as of May 9, 2022.

12. According to the Debtor’s Schedule D, the Property has an estimated value of \$300,000.00. Accordingly, there is no equity remaining in the Property, and it is not necessary for effective reorganization. A copy of the Debtor’s Schedule D is annexed hereto as **Exhibit D**.

13. A copy of the Relief from Stay-Real Estate and Co-operative Apartments worksheet is annexed hereto as **Exhibit E**.

APPLICATION

14. The Movant is entitled to an Order confirming that the automatic stay did not go into effect upon the filing of the instant case. 11 U.S.C. § 362(j) provides, in pertinent part, as follows:

On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated, as the property was acquired post-petition pursuant to the conveyance of Quit Claim Deed entered into after the filing of the instant Bankruptcy matter.

15. Furthermore, relief is warranted pursuant to 11 U.S.C. §362 (d)(1), for the Debtor’s failure to maintain regular mortgage payments, and pursuant to 11 U.S.C. § 362(d)(2) is also appropriate due to the lack of equity in the Property.

16. Movant therefore requests, as a party in interest, an Order confirming that no stay is in effect or an Order terminating the Automatic Stay

WHEREFORE, the Movant respectfully requests that this Court issue an Order confirming that the automatic stay under 11 U.S.C. §362(a) did not go into effect upon the filing of the instant case; and for such other and further relief as the Court may deem just and proper.

Dated: May 19, 2022
Garden City, New York

FRIEDMAN VARTOLO, LLP

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